

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.785 OF 2005

Mr. Sudhir S.Jhunjhunwala ... Petitioner

V/s

1 The State of Maharashtra & Anr. ... Respondents

Nankani & Associates for petitioner.

Coram : V.M. Kanade, J.

Dated : 13/04/2005.

P.C. :-

1 The petitioner is the original accused No.1 in the criminal complaint filed under section 138 read with section 141 of the Negotiable Instruments Act in the Metropolitan Magistrate, 30th Court at Ballard Pier, Mumbai by the respondent No.2 .

2 The petitioner is challenging the judgment and order passed by the Session Court in revision application No.720 of 2003. By the said order, the Session Court set aside the order passed by the Metropolitan Magistrate recalling its earlier order of issuance of process .In the alternative, he is challenging the order of issuance of process passed by the Metropolitan Magistrate under section

482 of the Criminal Procedure Code. It is submitted by the learned counsel for the petitioner that the petitioner is neither a drawer of cheque in question nor he is a signatory thereof. It is submitted that the complainant in paragraph No.5 of the complaint has specifically alleged that the accused No.2 is a signatory to cheque in question. It is further submitted that the accused No.2 has not alleged that the petitioner is a proprietor or partner or director of a firm M/s Jyoti Corporation. It is, therefore, submitted that the order of the Session Court is liable to be quashed and set aside. Even otherwise, the order of issuance of process is liable to be quashed. It is not possible to accept the submission made by the learned counsel for the petitioner. I have perused the complaint which is annexed to the petition. In the complaint, the particulars of transaction have been given. A letter dated 28/05/1999 addressed to the complainant is annexed to the complaint. In that letter the accused No.1 has been admitted that he had issued two cheques in favour of the complainant. Thus, all the defences raised by the petitioner in the writ petition will have to be proved after the evidence is adduced by both parties in the trial court. In my view, therefore, there is no reason to interfere with the order of issuance of process by the Metropolitan Magistrate or the order passed by the Session Court in the revision application. All the questions raised in this petition are kept open and same shall be

considered by the trial court after evidence is adduced by

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both parties on merits and in accordance with law.

Accordingly, criminal writ petition is dismissed.

(V.M.Kanade, J.)